



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 9579451

Date: AUG. 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an illustrator, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth an initial evidentiary threshold of recognition through either a one-

time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

## II. ANALYSIS

The Petitioner has served as an illustrator and art director on several advertising campaigns, working for different advertising agencies and then establishing his “own illustration and animation company,” while also teaching graphic design at the university level in Colombia. He also illustrated a children’s book and wrote his own book on how to sculpt [REDACTED]. After filing the petition and securing employment authorization, the Petitioner has begun working as a senior art director for the advertising agency [REDACTED]. The appeal includes evidence of the Petitioner’s activities after the petition’s filing date. These materials show that the Petitioner has continued to be successful in his field, but cannot establish that he was eligible for the benefit sought at the time of filing as required by 8 C.F.R. § 103.2(b)(1).

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met seven of those criteria:

- Σ (i), Lesser nationally or internationally recognized prizes or awards;
- Σ (iii), Published material about the alien in professional or major media;
- Σ (iv), Participation as a judge of the work of others;
- Σ (v), Original contributions of major significance;
- Σ (vii), Display at artistic exhibitions or showcases;
- Σ (viii), Leading or critical role for distinguished organizations or establishments; and
- Σ (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the evidentiary criteria, numbered (iv) and (vii). On appeal, the Petitioner asserts that he also meets the criteria numbered (i), (v), and (viii). The Petitioner does not contest the Director’s conclusions regarding the other previously claimed criteria, and therefore we consider those issues to be abandoned.<sup>1</sup>

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<sup>1</sup> See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

After reviewing all of the evidence in the record, we agree with the Director's conclusion that the Petitioner has satisfied two criteria, numbered (iv) and (vii). We discuss the remaining three criteria below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner's employer, an advertising agency, won a Sol de Plata (Silver Sun) prize at the [ ] Festival in 2012, in recognition of an advertisement for a [ ]. A photograph of the Silver Sun trophy shows an engraved plaque, but the engraving is not legible, so the photograph does not show that the Petitioner personally received the trophy. Another photograph shows the Petitioner holding the trophy, with his hands completely obscuring the engraved plaque.

The Director determined that the Petitioner had not submitted documentation of his receipt of the prize. On appeal, the Petitioner contends that he did submit such documentation, in the form of a letter from an official of the advertising agency that won the prize. That official asserts that the Petitioner, "together with the creative team at the company, was awarded a Silver Sun." The agency's letter, however, is not documentation of the Beneficiary's receipt of the prize. Rather, it is an assertion from an individual who was not involved in the selection of winners.

The Petitioner has established his involvement in an award-winning project, but not the extent to which the award recognized his contributions in particular. The Petitioner submits copies of newspaper articles about the Festival and the awards, but these materials do not show the Petitioner's receipt of the prize. A catalog of advertising art names the Petitioner as one of three art directors who worked on the project, although the Petitioner was not the artist who created the image used in the advertisement.

The Petitioner also asserts that his inclusion in competitive, juried exhibitions also constitute prizes. The Petitioner submits information about exhibitions by Latin American [ ] and [ ]. The Petitioner has not shown that the annual competition or the selection of winners receives significant national or international notice. The publicity that the Petitioner has documented does not identify individual winning works, and the Petitioner has not established the profile of the exhibitions (which appear to take place at venues such as a library and a university). The reputation of the awarding entity is not necessarily proportional to the recognition accorded to a particular prize or award from that entity. Therefore, while inclusion in a juried exhibition may constitute a prize under some circumstances, the Petitioner has not established that the selection of his work for these particular events amounts to his receipt of nationally or internationally recognized prizes or awards.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. See

Silverman v. Eastrich Multiple Investor Fund, L.P., 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in APWU v. Potter, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner asserts that his instructional book on [redacted] has made “an impact in the education field . . . [and] to many more professional areas such as health and psychology, and it has had social impact through religious organizations or foundations with social approaches.”

The record shows that the Colombian Ministry of Education included the book in the [redacted] [redacted] Letters in the record indicate that psychologists use the book for team exercises; physical therapists use it for rehabilitation; and a church states that the Petitioner “organizes [redacted] [redacted] workshops” based on his work.

The contributions described are more educational than artistic, and since the book’s publication in 2006, the Petitioner’s documented work has been in the field of advertising rather than in educational materials for children. Also, the Petitioner does not provide a basis for comparison to show the impact of his work in relation to that of others.

For the above reasons, the Petitioner has not established that his 2006 book constitutes an artistic contribution of major significance in the field.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner asserts that he performed in leading or critical roles for three advertising agencies in Colombia. The record establishes that these organizations have distinguished reputations, but not that the Petitioner performed in leading or critical roles for those organizations.

The Petitioner establishes his involvement in projects for important clients, and officials of the companies attest to his talent, but his role within a given project is not necessarily critical to the organization as a whole. We note that when, in the appellate brief, the Petitioner discusses projects that have contributed to the reputations of the agencies, the Petitioner “does not contend that he worked on the particular campaigns [thus] referenced.”

The Petitioner also contends that he performed in a leading role as a senior art director at one of the agencies. He states: “A Senior Art Director is clearly a leading role as evidenced by the title itself. AAO case-law states that a leading role should be apparent by its position in the overall organizational hierarchy; clearly a senior director would be considered a leading role in a hierarchy.” To support this contention, the Petitioner cites an unpublished appellate decision, which does not constitute case law or other binding authority.

U.S. Citizenship and Immigration Services (USCIS) officers are, however, bound by a USCIS policy memorandum which states that “[a] title, with appropriate matching duties, can help to establish if a

role is (or was), in fact, leading.”<sup>2</sup> The Petitioner has not adequately established the nature of his duties as a senior art director, or submitted evidence such as an organizational chart to show that he had a leading role in the context of the company, rather than the more limited context of specific projects or accounts. The record also does not show how many senior art directors worked at the company at the time, which may have shed light on the nature and scope of each senior art director’s responsibilities.

For the reasons explained above, the Petitioner has not established that his work for advertising agencies in Colombia amounted to leading or critical roles.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The record indicates that the Petitioner has earned some degree of recognition over the course of a successful career. Nevertheless, success is not the same as sustained national or international acclaim. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. The evidence of record lacks sufficient context to establish that the Petitioner’s achievements, as of the time of filing, place him in the small percentage at the very top of his field as required by 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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<sup>2</sup> USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.